

SENATE BILL NO. 433

INTRODUCED BY J. LASLOVICH

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A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A JUDGE TO TERMINATE A DEFERRED OR SUSPENDED SENTENCE UNDER CERTAIN CONDITIONS; ~~AND AMENDING SECTIONS 46-18-201 AND SECTION 46-18-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 46-18-201, MCA, is amended to read:~~

~~"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:~~

- ~~—— (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or~~
- ~~—— (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.~~

~~(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.~~

~~(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.~~

~~(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:~~

- ~~—— (a) a fine as provided by law for the offense;~~
- ~~—— (b) payment of costs as provided in 46-18-232 or payment of costs of assigned counsel as provided in 46-8-113;~~
- ~~—— (c) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a~~



1 state prison to be designated by the department of corrections;

2 ~~—— (d) commitment of:~~

3 ~~—— (i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a~~  
4 ~~recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years~~  
5 ~~of the commitment to the department of corrections must be suspended; or~~

6 ~~—— (ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense~~  
7 ~~enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in~~  
8 ~~an appropriate correctional facility or program;~~

9 ~~—— (e) with the approval of the facility or program, placement of the offender in a community corrections~~  
10 ~~facility or program as provided in 53-30-324;~~

11 ~~—— (f) with the approval of the prerelease center or prerelease program and confirmation by the department~~  
12 ~~of corrections that space is available, placement of the offender in a prerelease center or prerelease program for~~  
13 ~~a period not to exceed 1 year;~~

14 ~~—— (g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for~~  
15 ~~a period of time determined by the department of corrections, but not exceeding the period of state supervision~~  
16 ~~of the person; or~~

17 ~~—— (h) any combination of subsections (2) through (3)(g).~~

18 ~~—— (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the~~  
19 ~~sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of~~  
20 ~~the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under~~  
21 ~~subsection (1)(a) or (2) may include but are not limited to:~~

22 ~~—— (a) limited release during employment hours as provided in 46-18-701;~~

23 ~~—— (b) incarceration in a detention center not exceeding 180 days;~~

24 ~~—— (c) conditions for probation;~~

25 ~~—— (d) payment of the costs of confinement;~~

26 ~~—— (e) payment of a fine as provided in 46-18-231;~~

27 ~~—— (f) payment of costs as provided in 46-18-232 and 46-18-233;~~

28 ~~—— (g) payment of costs of assigned counsel as provided in 46-8-113;~~

29 ~~—— (h) with the approval of the facility or program, an order that the offender be placed in a community~~  
30 ~~corrections facility or program as provided in 53-30-324;~~

- 1 ~~———(i) with the approval of the prerelease center or prerelease program and confirmation by the department~~  
 2 ~~of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease~~  
 3 ~~program for a period not to exceed 1 year;~~
- 4 ~~———(j) community service;~~
- 5 ~~———(k) home arrest as provided in Title 46, chapter 18, part 10;~~
- 6 ~~———(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;~~
- 7 ~~———(m) with the approval of the department of corrections and with a signed statement from an offender that~~  
 8 ~~the offender's participation in the boot camp incarceration program is voluntary, an order that the offender~~  
 9 ~~complete the boot camp incarceration program established pursuant to 53-30-403;~~
- 10 ~~———(n) participation in a day reporting program provided for in 53-1-203;~~
- 11 ~~———(o) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the~~  
 12 ~~protection of the victim or society; or~~
- 13 ~~———(p) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p):~~
- 14 ~~———(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a~~  
 15 ~~verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in~~  
 16 ~~46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment~~  
 17 ~~of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the~~  
 18 ~~sentence is deferred or suspended.~~
- 19 ~~———(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1)~~  
 20 ~~through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to~~  
 21 ~~be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension~~  
 22 ~~of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.~~
- 23 ~~———(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in~~  
 24 ~~46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part~~  
 25 ~~5.~~
- 26 ~~———(8) If a felony sentence includes probation, the department of corrections shall supervise the offender~~  
 27 ~~unless the court specifies otherwise.~~
- 28 ~~———(9) Notwithstanding the provisions of subsection (2), when imposition of a sentence has been deferred~~  
 29 ~~or execution of a sentence has been suspended, the prosecutor or defendant may at any time file a petition to~~  
 30 ~~vacate the time remaining on the deferred or suspended sentence. Upon receipt of the petition, a court may~~

1 ~~vacate the remainder of a deferred or suspended sentence if the court finds from the facts of the petition that~~  
2 ~~vacation of the time remaining on the sentence is in the interests of justice. A court may, in its discretion, hold a~~  
3 ~~hearing on the petition."~~

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5 **NEW SECTION. SECTION 1. TERMINATION OF REMAINING PORTION OF DEFERRED OR SUSPENDED SENTENCE**

6 **-- PETITION. (1) WHEN IMPOSITION OF A SENTENCE HAS BEEN DEFERRED OR EXECUTION OF A SENTENCE HAS BEEN**  
7 **SUSPENDED, THE PROSECUTOR OR DEFENDANT MAY FILE A PETITION TO TERMINATE THE TIME REMAINING ON THE**  
8 **SENTENCE IF:**

9 **(A) IN THE CASE OF A DEFERRED IMPOSITION OF SENTENCE, THE DEFENDANT HAS SERVED ONE-HALF OF THE**  
10 **SENTENCE AND HAS DEMONSTRATED COMPLIANCE WITH SUPERVISION REQUIREMENTS; OR**

11 **(B) IN THE CASE OF A SUSPENDED SENTENCE:**

12 **(i) THE DEFENDANT HAS SERVED TWO-THIRDS OF THE TIME SUSPENDED; AND**

13 **(ii) THE DEFENDANT HAS BEEN GRANTED A CONDITIONAL DISCHARGE FROM SUPERVISION UNDER 46-23-1011**  
14 **AND HAS DEMONSTRATED COMPLIANCE WITH THE CONDITIONAL DISCHARGE FOR A MINIMUM OF 12 MONTHS.**

15 **(2) THE COURT MAY HOLD A HEARING ON THE PETITION ON ITS OWN MOTION OR UPON REQUEST OF THE**  
16 **PROSECUTOR OR THE DEFENDANT.**

17 **(3) THE COURT MAY GRANT THE PETITION IF IT FINDS THAT:**

18 **(A) TERMINATION OF THE REMAINDER OF THE SENTENCE IS IN THE BEST INTERESTS OF THE DEFENDANT AND**  
19 **SOCIETY;**

20 **(B) TERMINATION OF THE REMAINDER OF THE SENTENCE WILL NOT PRESENT AN UNREASONABLE RISK OF DANGER**  
21 **TO THE VICTIM OF THE OFFENSE; AND**

22 **(C) THE DEFENDANT HAS PAID ALL RESTITUTION AND COURT-ORDERED FINANCIAL OBLIGATIONS IN FULL.**

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24 **Section 2.** Section 46-18-204, MCA, is amended to read:

25 **"46-18-204. Dismissal after deferred imposition.** Whenever the court has deferred the imposition of  
26 sentence and after termination of the time period during which imposition of sentence has been deferred or upon  
27 ~~vacation~~ TERMINATION of the time remaining on a deferred sentence under 46-18-201(9) [SECTION 1], upon motion  
28 of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw a plea of  
29 guilty or nolo contendere or may strike the verdict of guilty from the record and order that the charge or charges  
30 against the defendant be dismissed. A copy of the order of dismissal must be sent to the prosecutor and the

1 department of justice, accompanied by a form prepared by the department of justice and containing identifying  
2 information about the defendant. After the charge is dismissed, all records and data relating to the charge are  
3 confidential criminal justice information, as defined in 44-5-103, and public access to the information may ~~only~~  
4 be obtained only by district court order upon good cause shown."

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6 **NEW SECTION. SECTION 3. CODIFICATION INSTRUCTION. [SECTION 1] IS INTENDED TO BE CODIFIED AS AN**  
7 **INTEGRAL PART OF TITLE 46, CHAPTER 18, PART 2, AND THE PROVISIONS OF TITLE 46, CHAPTER 18, PART 2, APPLY TO**  
8 **[SECTION 1].**

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10 **NEW SECTION. SECTION 4. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.**

11 - END -